

CRIMINAL NO. 3:02CR195-1

JOHN CHARLES BARKLEY

ORDER

The Defendant's lecture is in vain. The Fourth Circuit Court of Appeals has directed district courts not to do the very thing the Defendant here has requested. In *United States v.*

Emmanuel, 288 F.3d 644 (4th Cir. 2002),¹ the Fourth Circuit reversed the undersigned for construing a motion as one pursuant to § 2255 when it had been captioned by a petitioner for other relief. The Court takes its direction from the Fourth Circuit and is unable to simply disregard the captions of pleadings as styled by petitioners.

If the Defendant desires to file a motion pursuant to 28 U.S.C. § 2255, he may do so as his statutory time has not expired. The undersigned is not allowed to construe his motions styled otherwise as seeking such relief. Nor is the undersigned obligated to notify the petitioner that motions styled otherwise will be converted unless the Court, in fact, intends to do so. The Court does not intend to do so because that could deprive a petitioner of the opportunity to raise every issue which he desires to raise in his initial, and only, motion pursuant to § 2255.

IT IS, THEREFORE, ORDERED that the Defendant's motion for reconsideration is hereby **DENIED**.

¹The Defendant has cited this case in his motion.

Signed: July 26, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

